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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re) CIB DOCKET NO. 98-48
)
)
JERRY SZOKA)
Cleveland, Ohio)
)
Order to Show Cause Why a Cease)
and Desist Order Should Not Be Issued)

To: Joseph Chachkin
Chief Administrative Law Judge

**COMPLIANCE AND INFORMATION BUREAU'S OPPOSITION TO
MOTION TO ENLARGE ISSUES**

1. On August 4, 1998, Jerry Szoka ("Szoka") filed a motion to enlarge issues. The Compliance and Information Bureau ("Bureau") submits the following opposition.

2. Szoka seeks to expand this proceeding to resolve eight additional issues. Szoka seeks to justify the timing for his motion on his failure to have counsel, and his own belief that he did not have "options within the existing structure of the Rules." Szoka also apparently bases his delay in filing the motion on the pendency of the Commission's rule making proceeding involving low power radio broadcasting and the Commission's litigation against an unlicensed broadcaster named Stephen Dunnifer. Szoka asserts that no prejudice will be caused the Bureau because there is no allegation regarding harmful interference.

3. Section 1.229(a) of the Commission's Rules, 47 C.F.R. § 1.229(a), generally imposes a deadline of 15 days after Federal Register publication of the full text or summary of the order designating the case for hearing for the filing of such motions. Here, since publication occurred on May 13, 1998 (62 Fed. Reg. 26601), Szoka's motion is over two months late. Motions filed after the expiration date can only be considered where pursuant to

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Section 1.229(b)(3) reasons are set forth why it was not possible to file the motion within the prescribed period or pursuant to 1.229(c) of the rules "if (and only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing." 47 C.F.R. §§ 1.229(b)(3); 1.229(c). The Bureau believes that Szoka has failed to adequately demonstrate why it was not possible to timely file his motion or to demonstrate that his motion raises a question of probable decisional significance and substantial public interest importance.


4. Essentially, Szoka must demonstrate "good cause" for his untimely filing. *See* Section 1.229(b)(3) of the rules, 47 C.F.R. § 1.229(b)(3). He has not done so. Rather, he has demonstrated that his failure to file the instant motion in a timely manner was based on his asserted ignorance of the rules and his failure to obtain the assistance of counsel, neither of which is viewed as an adequate reason for tardiness. *See HS Communications, Inc.*, 6 FCC Rcd 3452, 3454 (Rev. Bd. 1991), citing *Royce International Broadcasting v. FCC*, 820 F.2d 1332, 1337 (D.C. Cir. 1987).

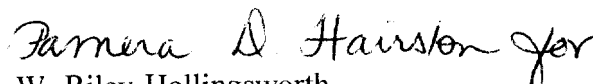
5. Moreover, Szoka's motion does not raise a question of probable decisional significance and substantial public interest importance. In this regard, Szoka's requested additional issues do not provide a basis to bar this Court from issuing a cease and desist order. Szoka is operating without a license. Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. § 301, plainly and unequivocally bars Szoka's admittedly unlicensed operation. No other statutory provision authorizes such an operation. Thus, his qualities as a "broadcaster," the value (or lack thereof) of his programming, and the presence

or absence of harmful interference are immaterial. Just as pointless are the remaining requested issues. The instant proceeding already provides an adequate statutory basis for determining whether Szoka is subject to a monetary forfeiture, and, if so, the amount thereof. In this regard, Szoka had the opportunity to demonstrate, pursuant to Section 503 of the Act, 47 U.S.C. § 503(b)(2)(D), and Section 1.80(g) of the rules, 47 C.F.R. § 1.80(g), why a monetary forfeiture should or should not be assessed for an amount less than that proposed in the Order to Show Cause in this proceeding. Whether he has done either is now before the presiding judge in connection with the Bureau's pending motion for summary decision. Even his contention regarding the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, 110 Stat. 857 ("SBREFA"), is without merit because SBREFA does not extend its protection to small business entities engaged in willful conduct such as Mr. Szoka's operation of an unlicensed station which is in direct violation of the Section 301 of the Communications Act. See Section 223(b)(4) of SBREFA.

6. Accordingly, the presiding judge should deny Szoka's motion to enlarge issues.

Respectfully submitted,
Richard Lee
Chief, Compliance and Information Bureau


Pamera D. Hairston
Chief, Compliance Division


W. Riley Hollingsworth
Attorneys

CERTIFICATE OF SERVICE

Deborah Hannah, an employee in the Compliance and Information Bureau, certifies that she has on this 14th day of August, 1998, sent by first class United States mail, copies of the foregoing "Compliance and Information Bureau's Opposition to Motion to Enlarge Issues" to:

James A. Moody
2300 N Street, N.W., Suite 600
Washington, D.C. 20037

Hans Bader
Center for Individual Rights
1233 20th Street, Suite 300
Washington, D.C. 20036

Chief Administrative Law Judge Joseph Chachkin
Federal Communications Commission
2000 L Street, N.W., Suite 226
Washington, D.C. 20554


Deborah Hannah